



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.10.2019

CORAM

THE HONOURABLE **MR. JUSTICE G.K.ILANTHIRAIYAN**

CRL.O.P (MD) No.15074 of 2019

and

CrI.M.P.(MD) Nos.8999 & 9000 of 2019

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Petchimuthu @ Payasam : Petitioner/Accused No.4

Vs.

1.State rep by its

The Deputy Commissioner of Police,
Tirunelveli City, Tirunelveli.

2.The Inspector of Police,

Tirunelveli Town Police Station,
Tirunelveli District.

(Crime No.579 of 2011)

: Respondents 1 & 2/Complainant

3.Perumal

: 3rd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records relating to the charge sheet in S.C.No.140 of 2015 on the file of the II Additional District and Sessions Court (PCR), Tirunelveli and quash the same insofar as petitioner is concerned.

For Petitioner

: Mr.C.Susi Kumar

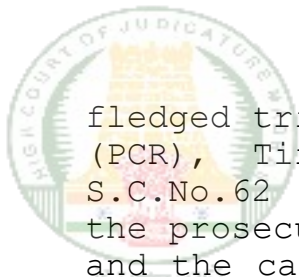
For R1 & R2

: Mr.K.Suyambulinga Bharathi,
Government Advocate

ORDER

This petition has been filed to quash the proceedings in S.C.No.140 of 2015 on the file of the II Additional District and Sessions Court (PCR), Tirunelveli, having been taken cognizance for the offence under Sections 341, 294(b), 302, 506(ii) IPC r/w Section 3(2)(V) of SC/ST(POA) Act 1989 altered into 147, 148, 341, 294(b), 302, 506(ii) IPC r/w Section 34 IPC and Section 3(2)(V) of SC/ST (POA) Act, 1989.

2. The case of the prosecution is that there are totally nine accused, in which, the petitioner was arrayed as A4. The respondent police after investigation, filed a final report and the same was taken cognizance as S.C.No.62 of 2013 on the file of the II Additional District and Sessions Judge(PCR), Tirunelveli. Since the petitioner went to Karnataka for his survival, he could not attend the trial and hence, the case was split up and the trial was proceeded against other accused. After completion of the full



fledged trial, the learned II Additional District and Sessions Judge (PCR), Tirunelveli has acquitted the said accused persons in S.C.No.62 of 2013 by Judgment, dated 11.11.2016 on the ground that the prosecution has not been proved the case beyond reasonable doubt and the case against the petitioner is now pending as S.C.No.140 of 2015.

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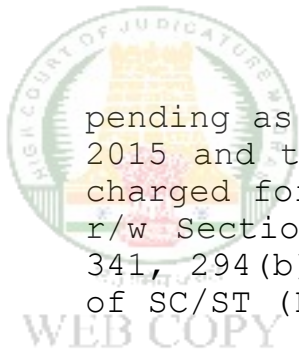
3. The learned counsel appearing for the petitioner submitted that the 1st respondent completed the investigation and filed the final report and the same has been taken cognizance in S.C.No.62 of 2013 and thereafter, other accused appeared before the trial Court and conducted the case, which was also ended in acquittal vide judgment dated 11.11.2016. Since, the petitioner/A4 went to Karnataka and non bailable warrant has been issued as against him and also, since the same was unable to execute the warrant issued against the petitioner, the trial Court split up the case insofar as A4/the petitioner is concerned in S.C. No.140 of 2015 and it is now pending. The trial Court acquitted the other accused on the ground that the prosecution did not prove the case beyond doubt.

4. The learned counsel appearing for the petitioner further submitted that the petitioner has nothing to do with the crime as alleged by the prosecution. The prosecution examined Pws.1 to 7 and marked as Exs.P1 to 46 and the trial Court found that they have not spoken about the charges to prove the same and as such, other accused have been acquitted. In these circumstances, as against the petitioner/A4, there is absolutely no evidence and as such, the pendency of the proceedings in S.C.No.140 of 2015 would not serve any purpose and therefore, he prayed for quashment of entire proceedings.

5. The learned Government Advocate (criminal side) would submit that there are totally nine accused, in which, the petitioner was arraigned as A4 and only because of the absence of the petitioner before the trial Court, his case has been split up from the main case in S.C.No.62 of 2013, which was ended in acquittal vide judgment dated 11.11.2016. Therefore, the case as against the petitioner is concerned is pending in S.C.No.140 of 2015 for trial and the prosecution has to let in evidence and they have incriminating evidence as against the petitioner and as such, he sought for dismissal of the quash petition.

6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (criminal side) appearing for the first and second respondents.

7. It is the admitted case of the petitioner as well as the prosecution that there are totally nine accused, in which, A1, A2, A3, A5, A6, A7, A8 and A9 are concerned, the trial has been conducted and they have been acquitted in S.C No.62 of 2013 and the petitioner is concerned, since non bailable warrant is



pending as against them, the case has been split up in S.C.No.140 of 2015 and the same is pending for trial. All the accused have been charged for the offence under Sections 341, 294(b), 302, 506(ii) IPC r/w Section 3(2)(V) of SC/ST(POA) Act 1989 altered into 147, 148, 341, 294(b), 302, 506(ii) IPC r/w Section 34 IPC and Section 3(2)(V) of SC/ST (POA) Act, 1989.

8.The trial Court recorded the reason for acquittal as follows:

"28.The learned counsel for the accused would further add that as per the case of the prosecution that A1 to A3 referred in the FIR namely Chelladurai, Ganesan have cut the deceased indiscriminately and he was done to death but in the evidence he was giving a different picture naming Petchimuthu have cut the deceased have severed the head of the deceased but in the complaint, it was attributed to three persons namely Chelladurai, Ganesan and Sankaran and hence that the contention of the learned counsel for the accused that the evidence of PW1 is totally contradict to Ex.P1. But while appreciating the solitary evidence the Honourable Supreme Court in 2003(2) SCC 401 Lallu Manjhi Vs State of Jharkand held as follows:

10.The Law of Evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single witness, the Court may classify the oral testimony into three categories, namely (I) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. In the first two categories there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon testimony of a single witness.

By applying the above judgment of the Honourable Supreme Court that the minor discrepancies cannot be taken to be granted and it cannot go to the root of the matter. But when the entire prosecution case has been varied by the PW1 certainly it becomes doubtful. By following the judgment of the Honourable Supreme Court that though there is a ring of truth and the evidence of PW 1 that the deceased Thirumalai was murdered and his death is homicidal and the scene of occurrence was also proved by the other evidence available on record. But whereas whether PW 1 can be the eye witness or not has to be decided. Having regard to the above factors that the evidence of PW 1 is not contradictory to Ex.P1 and he was giving a different picture with regard to the occurrence in respect of the witness like PW 1. In respect of the



appreciating the evidence of solitary evidence the Honourable Supreme Court had categorized the witnesses as three categories and following the excerpt may shed light to the present facts of the case and the Honourable Supreme Court to the above facts. Now the PW 1 is coming within the category of No.3 who is neither reliable nor wholly unreliable being the first informant of the FIR and the evidence of PW1 in respect of the occurrence, place of occurrence and the cause of death cannot be doubted. But whether PW 1 can be the eye witness for the occurrence has to be tested that as per the evidence of PW1 that he has entirely departed from the prosecution and he has giving a different picture before this court and the following the Tabular column is explicated the variation of the prosecution case and on consideration of the above facts, I hold that the witness PW 1 is not neither wholly reliable and in such a case nor wholly unreliable and this court has to look for corroboration of the evidence of PW 1. for corroborating the evidence of PW 1 relied upon the prosecution case bloodstains in the weapon recovered from the accused Chelladurai. In so far as the other accused who are present before this Court, there is Nil evidence and even PW 1 has not spoken to A2, A3 and A5 to A9 though he has named three persons in the FIR and now the prosecution has to be narrowed down with regard to the guilt or otherwise A1 alone on the basis of the evidence of PW 1 apart from the other circumstances.

29.Now in view of the said circumstances relied upon the aruval recovered from the A1. The prosecution, the PW 24 Deputy Superintendent of Police had sent the aruval recovered from the accused through the learned Judicial Magistrate under the requisition Ex.P40 to the chemical examination of bloodstains and the report of Deputy Director of Regional Forensic Science Lab was marked as Ex.P41 along with the report of Serologist and the Serologist Report would show that the material object 6, 7, 8 are bill hooks (aruval) contains one blood. But the result of grouping test as inconclusive. It is stated as various precedents by the Honourable Supreme Court that if the weapon deducts one blood even it is disintegrated or the grouping test inconclusive that may not take away the onus on the accused. To explain how human blood was in the weapon recovered from him. The learned counsel would content that the recovery witness in so far as the A1, PW18 and PW19 have not supported the prosecution case and they have turned hostile. But the learned counsel for the State would content that even the prosecution witness in so far as the recovery witnesses have turned

<https://hcservices.ecourts.gov.in/hcservices/t> it cannot be gainsaid that the discovery



cannot be proved through the Investigating Officer. There is no quarrel over the said proposition that in the case of recovery witnesses turned hostile that the recovery can be proved through the Investigating Officer and the Honourable Supreme Court in 2012 (4) SCC 722 Govindaraju @ Govinda Vs. State By Sri Ramapuram PS and Another held as follows:

36.Ex.Mo1 was the knife recovered from Govindaraju while Mo2 and Mo3 were the knife and the blood-stained shirt recovered from the accused, Goverdhan. Ex.Mo.1, the weapon of offence, did not contain any blood stain. Ex.Mo.2, the knife that was recovered from the conservancy at the behest of the accused, Goverdhan was blood-stained. Ex.P.15, the report of the FSL, shows that item no.7 "One Chaku" was blood-stained. However, the prosecution has taken no steps to prove whether it was human blood, and if so, then was it of the same blood group as the deceased or not. Certainly, we should not be understood to have stated that a police officer by himself cannot prove a recovery, which he has affected during the course of an investigation and in accordance with law.

However, it is to be noted that in such cases, the statement of the investigating officer has to be reliable and so trustworthy that even if the attesting witnesses to the seizure turns hostile, the same can still be relied upon. More so, when it is otherwise corroborated by the prosecution evidence, which is certainly not there in the present case.

As per the above judgment that the evidence of recovery can be proved through the Investigating Officer provided it has to be reliable and trustworthy when it is otherwise corroborated by the prosecution evidence. But in the present case though PW23 has stated about the discovery of PW1 is not identified the aruval used by A1 and the relevant portion of the evidence of PW1 would read as follows:

என்னிடம் காட்டப்படும் 7 அருவான்களில் இந்த அரிவாள் என்று

குறிப்பிட்டு காட்ட முடியாது. ஆனால் இது போன்ற அரிவாள் தான் எதிரி உபயோகப்படுத்தியது.

But the above statement it is not possible to identify exactly used by the A1. Merely because that PW1 has not identified the aruval I don't want to dispel the prosecution case but even the investigating officer has not even to spoken with regard to the bloodstains and the present case curiously three aruvals alleged to have been recovered from A1 though one alone was sent to the chemical analysis and two was withheld by the prosecution and in the above circumstances though the bloodstains contained in one of the aruval (sickle) but it was not



correlated to A1 and hence the said circumstance will also not improve the prosecution case.

.....But that PW1 was not even firm whether he touched the deceased or not and the contention of the learned counsel for the accused that only because he was not present in the scene of occurrence at all and he was fixed later by the police he was not able to give a firm answer and though the contention having regard to the fact that his evidence is not consistent and his evidence is entirely dispelled from the Ex.P1 and he being a witness who is wholly reliable nor wholly unreliable his evidence cannot be acted upon without any corroboration and the judgment of Honourable High Court in (2012) MLJ (CRL) 721 Ramachandran Vs State of Inspector of Police, Thiruppur North PS in para 23 had held as follows:

23.In this context, it is relevant to note that in Dr.Sunil Kumar Sambhudayal Gupta and others Vs. State of Maharashtra (2010 (13) SCC 627), the Hon'ble Supreme Court held that where the omissions amounts to a contradiction, creating a serious doubt about the truthfulness of a witness and other witnesses who have made material improvements before the Court in order to make the evidence acceptable, it is unsafe to rely upon their evidence. [Also see in J.Xavier Raj Vs. State represented by Inspector of Police, Dindigul Taluk Police Station, Dindigul Dist.(2012 (1) MLJ (Crl.)561)].

Following the judgment of Honourable Supreme Court that in the present case that the omissions in the evidence of PW 1 and the improvements and entire departure from the prosecution case throws doubt over the presence of PW 1 in the scene of occurrence and in the present case that I am not able to dispel the evidence of PW 1 not only on the ground that he is not speaking the truth or vary from Ex.P.1. But on accepting the inconsistent and infirm evidence of PW 1 though I am seriously suspect the involvement of A1 in the present case but cannot slap any conviction it is settled law that suspicion however serious or grave while not take place of proof beyond reasonable doubt and hence taking note of the judgment of the Honourable Supreme Court in 2013 7 SCALE 546 (Sujit Biswas Vs. State of Assam) held as follows:

6.Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that 'may be' proved, and something that 'will be proved'. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between 'may be' and 'must be' is quite



large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between 'may be' true and 'must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between 'may be' true and 'must be' true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (vide: *Hanumant Vs. The State of Madhya Pradesh*, AIR 1952 SC 343; *State through C.B.I. Vs. Mahender Singh Dahiya*, AIR 2011 SC 1017; and *State through C.B.I. Vs. Mahender Singh Dahiya*, AIR 2011 SC 1017)

The above said judgment of the Supreme Court would make it clear that the suspicion even on graver degree may not take place of proof beyond reasonable doubt, when the question regarding the involvement of the accused in the occurrence comes to test in that case if a reasonable doubt is there, then the doubt had to go in favour of the accused and the Honourable Supreme Court in 2005 (6) SCC 1 *Jacob Mathew Vs. State of Punjab* and another had held that the presumption regarding innocence of the accused is a human right and I have no other option except to the extent inspite of the fact that there are evidences available on record to seriously (gravely) suspect the involvement of the accused and hence I am unable to hold that the accused are guilty of the offence, though a serious suspicion is created over the involvement of the accused in the offence.

31. In view of the above discussion that I hold that the prosecution failed to prove the charges beyond reasonable doubt and the accused are entitled to be acquitted and the bail bonds executed by themselves and on their behalf shall stand discharged except the bonds executed in terms of Section 437 A of Cr.P.C.



32. In fine the A1 to A3 are found not guilty for the offences punishable u/s 148, 341, 294(b), 302, 506(ii), 120(B) of IPC and Section 3(1)(X) and 3(2)(V) of SC/ST (PoA) Act and A4 to A7 are found not guilty for the offences punishable u/s 148, 341, 294(b), 302 r/w 149, 506(ii), 120(B) of IPC and Section 3(1)(X) and 3(2)(V) of SC/ST (PoA) Act and A8 is found not guilty for the offence punishable u/s 120(B) of IPC and they are acquitted under Section 235(1) Cr.P.C from the charges framed against them and the bail bonds executed by themselves shall stand cancelled except the bonds executed in terms of Section 437 A of Cr.P.C"

9. In this regard, it is relevant to rely the judgment reported in **2007-1 L.W.(Crl.) 514 - Tamilmaran Vs. The State rep. by Inspector of Police, Paravakottai Police Station, Mannargudi Taluk, Thiruvarur District**, where, this Court has held as follows:

"7. This Court is of the considered view that there is much force on the contention put forward by the learned senior counsel to the effect that the learned trial Judge having disbelieved the prosecution case in toto no useful purpose would be served by putting the petitioner to undergo the ordeal of trial on the basis of the very same set of evidence. It is also pointed out by the learned senior counsel that even the defacto complainant himself turned hostile giving a total go-by to his earlier version and there is no other material available on record to implicate the petitioner. The learned senior counsel has rightly placed reliance on the decision of the Delhi High Court in a case in **Sunil Kumar v. State** reported in **2000 (1) Crimes 73** wherein it is held as follows:

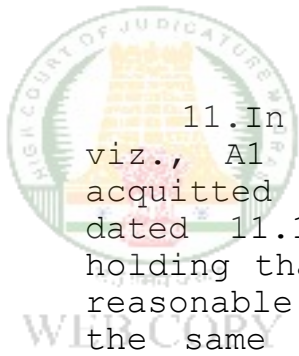
"3. The question thus is as to whether in the face of the judgment of acquittal the petitioner should still be permitted to undergo the ordeal of a trial. In **Sat Kumar v. State of Haryana (AIR 1974 SC 294)**, it was held that there is no rule of law that if the Court acquits some of the accused on the evidence of a witness raising doubt with regard to them the other accused against whom there is absolute certainty about his complicity in the crime based on the remaining credible part of evidence of that witness must be acquitted. (**See also Har Prasad v. State of Madhya Pradesh (AIR 1971 SC 1450), Makan Jivan v. State of Gujarat (AIR 1971 SC 1797) Mohd. Moin Uddin V. State of Maharashtra (1971 S.C.C. (Cri.) 617)**). But where the evidence against all the accused persons is inseparable



and indivisible and if some of the accused persons have been acquitted, the remaining accused persons cannot be treated differently on the basis of the same evidence.

4. On perusal of the Judgment of acquittal dated 19.01.1998 it appears that the deceased Balwan Singh met with a homicidal death owing to burn injuries sustained by him has not been disputed by the accused persons. The evidence against the accused persons mainly consists of the evidence of the eye-witnesses, namely, Karan Singh (PW2) and Smt. Asha Rani(PW-5) (Wife of the deceased Balwan Singh) besides the dying declaration (Ex.PW-13/a) of the deceased Balwan Singh. Both the said witnesses have not supported the prosecution case and so they have been declared hostile by the prosecution. Eliminating the evidence of the said eye-witnesses, there remains the dying declaration (Ex.PW.13/A) of the deceased Balwan Singh, which has been disbelieved by the learned Addl. Sessions Judge. It would, therefore, appear that the accused persons, namely, Jangli Tyagi, Balbir Singh, Anil Kumar Tyagi and Sushil Kumar Tyagi were acquitted on the ground of insufficiency of evidence. Thus, the evidence adduced in the case against all the accused persons is inseparable and indivisible and that being so the petitioner cannot be treated differently on the basis of the said evidence. In this view of the matter, there is no prospect of the case ending in conviction against the petitioner and the valuable time of the Court would be wasted for holding trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. If the Court is almost certain that the trial only would be an exercise in futility or sheer wastage of time, it is advisable to truncate or ship the proceedings at the stage of Section 227 if the Code itself."

10. Further, this Court and various High Courts repeatedly held that the acquittal of the other co-accused, after considering the depositions and holding their evidence to be unreliable, the trial Court cannot re-assess their depositions once again and take a contrary view. Therefore, this Court is of the considered view that the above settled proposition of law laid down in the above decision is applicable to the case on hand.



11.In the present case, except the petitioner, other accused viz., A1 to A3 and A5 to A9 have been tried the charges and acquitted in S.C.No.62 of 2013 by the trial Court by the judgment dated 11.11.2016 disbelieving the case of the prosecution and holding that the prosecution has failed to prove the charges beyond reasonable doubt. The petitioner is being A4 is also standing in the same footing like the other accused persons. Under these circumstances, no useful purpose would be served to make the petitioners to undergo the ordeal of the trial.

12.In view of the above discussion, this criminal original petition is allowed and the proceedings in S.C.No.140 of 2015 on the file of the II Additional District and Sessions Court, Tirunelveli is quashed as against the petitioner is concerned. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

- 1.The II Additional District and Sessions Court,
Tirunelveli.
2. The Deputy Commissioner of Police,
Tirunelveli City, Tirunelveli.
3. The Inspector of Police,
Tirunelveli Town Police Station,
Tirunelveli District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.C. SUSI KUMAR, Advocate SR-93796.

CRL.O.P. (MD) No.15074 of 2019
22.10.2019

CS(19.11.2019) 10P 6C